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From: Nicole Cordan [nicole@wildsalmon.org]
Sent: Friday, September 07, 2001 6:20 PM
To: comments@bpa.gov
Cc: Andrew; nicole@wildsalmon.org
Subject: UPDATED & REVISED SOS Comments on Fish & Wildlife Implementation Plan DEIS

Please delete the previous SOS comments sent in on BPA's Fish & Wildlife Implementation Plan Draft EIS (DOE/EIS-0312, May 2001).

This copy includes minor changes and edits. Hard copies to follow via U.S. Mail.

thanks you,
Nicole Cordan

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AMERICAN RIVERS * IDAHO RIVERS UNITED * INSTITUTE FOR FISHERIES RESOURCES * NATIONAL WILDLIFE FEDERATION * NW ENERGY COALITION * PACIFIC COAST FEDERATION OF FISHERMAN'S ASSOCIATIONS * SAVE OUR *WILD* SALMON * SIERRA CLUB * TROUT UNLIMITED

September 7, 2001

Mr. Stephen J. Wright
Acting Administrator
Bonneville Power Administration
P.O. Box 3621-A
Portland, OR 97208

Dear Mr. Wright:

On behalf of the Save Our *Wild* Salmon (SOS) coalition and its undersigned member organizations, we submit these comments on the draft "Fish & Wildlife Implementation Plan Draft Environmental Impact Statement" (DOE/EIS-0312) prepared by the Bonneville Power Administration under the National Environmental Policy Act (NEPA) and released to the public in June, 2001. The DEIS analyzes alternative policy directions for actions to protect fish and wildlife affected by the operation of the Federal Columbia River Hydrosystem.

With a combined individual membership of 6,000,000, SOS is a coalition of more than 50 sport fishing, commercial fishing, and conservation organizations - local, regional, and national - which seek restoration of salmon stocks throughout the Pacific Northwest to sustainably harvestable numbers. SOS appreciates this opportunity to comment on this DEIS.

While we support a comprehensive and coordinated approach to salmon and steelhead protection and recovery, that approach must be based on prudent, justifiable facts. An appropriate environmental impact statement should present the public and decision-makers with a fair and unbiased look at the range of alternatives for this comprehensive approach. SOS believes that the DEIS falls far short of the mark. The following comments describe in detail our legal, policy economic and scientific

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concerns.

I. National Environmental Policy Act

The twin goals of NEPA, 42 U.S.C. § 4331 *et seq.*, are to guarantee that: (1) federal agencies take a "hard look" at the consequences of their actions before the actions occur by ensuring "that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts," *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989); and (2) "the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision." *Id.* at 349. NEPA requires federal agencies to look before they leap. Unfortunately, the DEIS fails to serve this function.

A. The DEIS fails to take a "hard look" at all of the information and consequences of the alternatives.

NEPA, §101(2)(C)(iii), requires that an EIS contain a discussion of the "alternatives to the proposed action." This discussion of alternatives is at "the heart" of the NEPA process. 40 C.F.R. §1502.14. The CEQ regulations require the agency to "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. §1502.14(a). To do so, the agency must take a "hard look" at the environmental consequences of each of the alternatives.

A "hard look" requires the agency to engage in a "reasoned evaluation of the relevant factors" to ensure that its ultimate decision is truly informed. *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1332 (9th Cir. 1992). The EIS analysis must be searching, detailed and comprehensive; "[g]eneral statements about 'possible' effects and 'some risk,' do not constitute a 'hard look' absent a justification for why more definitive information could not be provided." *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998). An agency's failure to include and analyze information that is important, significant, or essential renders an EIS inadequate - for, without such detailed information, there is no way for the public or the agency to adequately assess the impacts of a proposed action. *See California v. Bergland*, 483 F. Supp. 465, 495 (E.D. Cal. 1980), *aff'd sub nom*, *California v. Block*, 690 F.2d 753 (9th Cir. 1982) (by failing to disclose key data in a draft EIS, "the Forest Service effectively undercut the twin goals of environmental statements: informed decisionmaking, and full disclosure").

As our specific comments address in more detail below, the DEIS fails the "hard look" test. Although SOS understands the programmatic scope of this DEIS, and the need to discuss policy options in broad terms, SOS believes that the DEIS does not present any of the detailed information necessary to inform the public, or BPA, about the environmental consequences of each of the policy direction alternatives. There are numerous options, details, studies - many of which have been compiled and discussed as part of other analyses - and facts that should be part of BPA's analysis. The programmatic scope of the DEIS does not excuse the agency from presenting and analyzing information that is readily accessible. #2

NEPA is designed to ensure a fully informed and well-reasoned decision. "In so doing, the EIS insures the integrity of the process of decision by giving assurance that stubborn problems or serious criticisms have not been 'swept under the rug'." *Silva v. Lynn*, 482 F.2d 1282, 1285 (1st Cir. 1978). Our specific comments below identify numerous occurrences where the DEIS puts forth biased or inaccurate information intended to steer the reader away from a particular policy alternative. #3 It is impossible to formulate well-reasoned, defensible policy choices when the information underlying the analysis of those choices is inaccurate or missing. Without accurate and comprehensive information, BPA is poised to make a decision based on irrelevant or inappropriate factors. *See, e.g. National Wildlife Federation v. Coleman*, 529 F.2d 359, 372 (5th Cir. 1976). #4

BPA's failure to take a "hard look" at the consequences of the various alternatives is compounded by the agency's stated intention to "tier" future documents to this EIS. *See* DEIS at 15-17; Executive Summary at 5-6. NEPA allows agencies "to tier their environmental impact statements to eliminate #5

repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review." 40 C.F.R. § 1508.20. To do so, however, the programmatic analysis must have been sufficiently detailed to have allowed meaningful review. In short, an agency cannot tier to a document that did not itself comply with NEPA.

SOS believes that this DEIS cannot possibly serve as the sort of detailed environmental analysis upon which future documents may rely. If the Final EIS suffers from the same lack of information and analysis that infects this draft, supplemental analyses will be required to ensure that the inadequacies of this DEIS do not carry over to site-specific actions. We are concerned that BPA will have neither the time, nor the inclination to do such analyses at the site-specific level. While SOS agrees that time is of the essence when it comes to actions to protect salmon, we are concerned that without an adequate and accurate analysis, those measures that could be most effective will be ignored. #5

Our concerns are not without basis - current activities illustrate the import of this faux analysis. For example, SOS understands that BPA "expects [that] its actions under this [Endangered Species Act Implementation] Plan [will] be covered under either the existing EISs noted above or under the new *Fish and Wildlife Implementation Plan EIS*. Where supplemental analyses are necessary, they will build on this underlying structure." See Endangered Species Act Draft Implementation Plan for the Federal Columbia River Power System, released in August 2001 at 62 (emphasis added). Contrary to BPA's assertion, however, there is nothing in this DEIS that considers the environmental impacts of many of the inadequate half-measures described in the Implementation Plan. Indeed, as we detail below in these comments and in our comments on the Endangered Species Act Implementation Plan, BPA's analysis misapprehends and discounts all too many of the most effective measures for salmon and steelhead protection. SOS is concerned that this may result in the action agencies ignoring vital information that should have been considered *at some stage* of the decision process. #6

B. The DEIS fails to adequately inform the public and decision-makers of the requirements and responsibilities imposed by the Northwest Power Act.

"A reasoned evaluation of the relevant factors" must also include an understanding of all the federal laws with which an agency must comply, especially when those other laws have been enacted to protect environmental and natural resources. The DEIS fails to inform adequately the public and the decision-makers of the requirements under numerous other laws including, but not limited to, the Northwest Power Act ("Power Act"), 16 U.S.C. §§ 839, *et seq*. #7

The DEIS continually speaks in terms of public and policy "trade-offs" between fish and wildlife and other uses of the Columbia River and its tributaries. BPA must recognize that Congress has already prescribed the result of these "trade-offs" in the Norwest Power Planning Act. The Power Act requires federal agencies, including BPA, "to adequately protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat," affected by hydroelectric dams in the Columbia Basin, 16 U.S.C. § 839b(h)(11)(A)(ii). It also imposes a separate, substantive duty for these agencies to "exercise [their] responsibilities consistent with the purposes of this Act and other applicable laws, to adequately protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by such projects or facilities in a manner that provides *equitable treatment* for such fish and wildlife with the other purposes for which such system and facilities are managed and operated." 16 U.S.C. § 839b(h)(11)(A)(i) (emphasis added). #8

The DEIS asserts that "BPA provides equitable treatment by implementing all or part of the Council's Program and taking action to meet the terms of relevant BiOps. The Ninth Circuit Court has upheld BPA's interpretation, holding that it is reasonable to balance power needs and mitigation needs on a system-wide basis." DEIS, Chap. 2 at 42. To the extent that this statement implies that the Ninth Circuit has sanctioned BPA's ability to satisfy its equitable treatment mandate simply by following the Council's Fish and Wildlife Program, or merely by fulfilling its obligations under the Endangered Species Act, it misrepresents those cases. To the contrary, the Ninth Circuit has twice rejected this same contention, finding that the requirement that BPA give equitable treatment to anadromous fish under 16 U.S.C. § 839b is clearly "substantive" and is, as the statue indicates, "independent" of its #

duty to consider the program adopted by the Council under 16 U.S.C. § 839b(h)(11)(A)(ii). *See Northwest Environmental Defense Ctr. v. BPA*, 117 F.3d 1520, 1532 (9th Cir. 1997); *Public Utility Dist. No.1 of Douglas County v. BPA*, 947 F.2d 386, 392 (9th Cir. 1991. The NPA requires BPA to do much more than just implement the Council's program or the ESA. BPA has failed to demonstrate that it meets that standard here. #9

C. The DEIS fails to comply with the Northwest Power Act's Equitable Treatment mandate.

In its explanation of funding mechanisms, the DEIS references "challenges" to consistent funding for fish and wildlife programs, mainly stemming from an increasing volatility in the price of purchased power and its affect on BPA's revenues and ability to cover costs. The DEIS offers the recent breakdown of California's restructured electric power market as an example of market conditions "getting in the way" of achieving the goal of fish and wildlife implementation.

In fact, BPA has relied on the declaration of a "Power Emergency" pursuant to the "Federal Agencies' Criteria and Priorities for 2001 FCRPS Operations" since early in the 2001 spring migration season to avoid meeting the spill and flow requirements of the 2000 FCRPS Biological Opinion. SOS strongly believes that this declaration of a power emergency, as well as the criteria upon which the declaration is based, are in flagrant violation of the Northwest Power Act's (NPA) "equitable treatment" mandate as referenced above.

SOS has repeatedly requested, through written letters to BPA, Army Corps and Engineers, Bureau of Reclamation, and National Marine Fisheries Service, that the federal agencies immediately begin operating the FCRPS in a manner that at a minimum satisfies the equitable treatment mandate of the NPA, including, but not limited to providing the spill and flows required by the 2000 FCRPS Biological Opinion. To date, this request has gone unheeded.

As described in the aforementioned letters, the federal agencies' declarations of emergency serve primarily to provide BPA with a financial cushion. Prioritizing the protection of BPA's cash flow while simultaneously refusing to utilize potential, reliable, and available alternative financial resources at best puts fish conservation measures second. Clearly and most simply, when BPA's power business does not adequately provide for its own reserve needs during drought conditions or while wholesale power prices are above normal, and instead must make salmon provide those reserves, the agency has not met the equitable treatment standard.

BPA has premised the DEIS on a fundamental misunderstanding of the NPA's Equitable Treatment mandate. The DEIS specifically states that "high prices for power may impair BPA's ability to finance fish and wildlife implementation," and that "extreme power demands and shortages may lead to modifications to fish and wildlife programs." Such direction violates the NPA. In these instances, the NPA requires BPA to manage risks equally across all aspects of the system. The Act does not allow BPA to put power ahead of fish. The DEIS is therefore fundamentally flawed due to its reliance on this misguided interpretation of the NPA's requirements. #10

II. Policy Direction Alternatives

A. Weak Stock Focus

The Save Our Wild Salmon Coalition has endorsed and advocated for the removal of the four lower Snake River dams as the most biologically beneficial and cost-effective means of recovering federally protected salmon runs in the Snake River. Of the proposed Policy Direction Alternatives, the "Weak Stock Focus" comes closest to embracing that goal. As such, the majority of these comments will be focused on that alternative and its impending environmental, economic and social impacts. #11

However, SOS feels that the Weak Stock focus fails to pay adequate attention to salmon runs not #12

listed for protection under the Endangered Species Act (ESA). In addition to meeting its directive to avoid jeopardy to federally protected salmon runs, federal action agencies must pay equal attention to these relatively healthy salmon populations to prevent the future listing of these species and to comply with tribal and Canadian treaty obligations. In short, the overall objective of the Fish and Wildlife Program should be to restore all salmon runs in the Columbia and Snake River Basins. #12

SOS believes that partial removal of the four lower Snake River dams must be a central component of any legally and scientifically legitimate fish recovery plan. Unfortunately, BPA has grossly misrepresented both the environmental impacts, as well as the socioeconomic impacts of dam removal on the lower Snake River. The following sections address those misrepresentations: #13

1. Air Quality Effects

The DEIS unfairly and inappropriately assumes negative impacts on air quality for a decision to remove the four lower Snake River dams. Under a dam breaching scenario, there would be a need to replace the power produced from the dams. However, there is ample evidence to show that the power from those four dams can be replaced without adversely impacting air quality. For example, a report by the *NW Energy Coalition* and *Natural Resources Defense Council* demonstrates that the relatively minimal amount of energy produced by the four lower Snake River dams can be replaced with a mixture of low-cost conservation and non-hydropower renewables for a minimal cost to ratepayers and no net increase in carbon dioxide emissions. The final EIS must consider this "clean air" alternative to power replacement and adjust the Policy Direction effects accordingly. #14

The DEIS assumes that the power would be replaced by a combination of new combustion turbines and prolonged use of existing coal facilities. As a result, the DEIS characterizes the effect of dam breaching on air quality with an increase in carbon monoxide (CO), carbon dioxide (CO2), nitrogen (NOX), particulate matter (PM10) and sulfur dioxide (SOX). Yet an analysis by the Army Corps of Engineers estimates that there would be no net increase in emissions for five of eight pollutants analyzed, and overall emissions in the Western United States would increase by less than one percent. #15

The DEIS also references increased emissions resulting from increased truck and rail traffic replacing barges. This assertion is again in contrast to the Army Corps of Engineers analysis, which actually predicts a reduction in transportation-related emissions for three of five (CO, SO2, and NOx), while overall emissions would decrease by seven tons/year. #16

The final EIS must incorporate these analyses and adjust the Policy Alternative or explain why such a change is unnecessary.

2. Water Quality Effects

SOS has two major concerns regarding the DEIS' discussion on water quality effects. First, SOS is uncertain why the agency has analyzed the amount of reservoir habitat and included reservoir habitat as a positive asset to the river environment. Second, SOS is concerned that the agency has underestimated the positive impacts of the Weak Stocks approach on water quality. #17

i. Reservoir Habitat

The DEIS improperly analyzes the effects of partial dam removal on reservoir habitat. The DEIS characterizes dam removal as an action that is "worse" because of its impact on "reservoir habitat." While it is true that dam removal will "worsen reservoir habitat" by eliminating the reservoirs, it is unclear to SOS why this impact would be characterized as "worse" in the DEIS. Minimizing the reservoir habitat and increasing the natural river conditions should be considered a beneficial impact,

not a negative impact. The analysis of this impact as a negative is a symptom of a much larger problem with the DEIS. As such, it cannot provide the public or decision-makers with the information they need to make a proper decision.

ii. Water Quality & the Weak Stocks Approach

SOS appreciates the fact that the agency acknowledges the improvements in water quality that would be associated with the Weak Stocks alternative. However, we are concerned that the agency either misunderstands the significance of these benefits or simply ignores them in certain situations. The "half truths" presented in the DEIS fall far short of the "hard look" that NEPA requires and seemingly ignore the mandates of the Clean Water Act. #18

The Clean Water Act, 33 U.S.C. §§ 1251 *et seq.,* obligates federal agencies to comply with state water quality standards. 33 U.S.C. § 1323. Water quality standards consist of at least three elements: (1) designated uses such as fishing, swimming, or salmonid migration, rearing, and spawning; (2) numerical or narrative standards; and (3) an antidegradation standard to prevent waters from further deterioration. 40 C.F.R. §131.10.13. Washington State established water quality standards on the Snake River which include the designated use of "salmonid migration, rearing, spawning, and harvesting." WAC 173-201A-030(2)(a-b). Washington has also established specific temperature and dissolved gas standards as well as an antidegradation standard which specifically are set to protect salmonids. WAC 175-201A-130(98)(a-b); WAC 175-201A-030(2)(c)(iii); WAC 175-201A-070(1).

A federal court has found that the four lower Snake River dams currently violate all three elements of Washington's water quality standards. *National Wildlife Federation v. U.S. Corps of Engineers,* 132 F.Supp.2d 876 (D. Or. 2001). The court has recognized these dams adversely impact water quality in the river in several ways.

For example, the reservoirs created by the dams have inundated spawning habitat for salmon and steelhead that historically used the mainstem Columbia and Snake rivers for these purposes. One hundred and forty miles of fall chinook and steelhead spawning habitat remains hidden beneath the four lower Snake River dams. The 2000 FCRPS Biological Opinion acknowledges that because of this inundation, current mainstem spawning areas for fall chinook are mostly confined to the Hanford Reach on the Mid-Columbia and to the Hell's Canyon Reach on the Snake River. The Hanford Reach is the only known mainstem spawning area for steelhead. This loss of spawning habitat has been and continues to be a primary cause of fall chinook and steelhead declines in the Basin.

As the DEIS recognizes, the reservoirs also increase water temperature and dissolved gas levels, both of which are detrimental to fish and wildlife. Water temperatures in the Snake River may reach as high as 80 degrees Fahrenheit this summer, a temperature lethal for salmon and steelhead. But, temperatures do not need to be that high to impact salmon adversely. Increased water temperatures interfere with juvenile salmon smoltification (the transformation from fresh to salt water life forms), cause migration delays, increase predation rates, and increase susceptibility of salmon to disease. The increased dissolved gas levels created by the dams cause a disease similar to the bends in young salmon migrating downstream and the slow moving reservoir water cannot rid itself of the gas as it moves downstream. Both temperature and gas problems accumulate as the water moves down river. As a result, the removal of the Snake River dams would provide water quality benefits for Columbia River salmon as well.

Removing the four lower Snake River dams would have substantial biological benefit for all Columbia and Snake migrating salmon and steelhead by opening up otherwise lost spawning habitat and decreasing the adverse water temperatures and other pollution (e.g., dissolved gas) that accumulate in the rivers. Although some of these benefits are acknowledged in the DEIS, others are ignored. But, most surprisingly, the DEIS seems to suggest that the water quality requirements of the Clean Water Act need only be met where possible. A federal court recently rejected a similar argument put forth by the U.S. Army Corps of Engineers. *See National Wildlife Federation v. U.S. Army Corps of Engineers*, 132 F.Supp.2d 876 (D. Or. 2001). (finding that federal agencies must #19

comply with water quality standards). We expect that the agency will correct these flaws in the final EIS and give the Weak Stocks alternative the proper "hard look" in terms of water quality improvements. #19

3. Fish and Wildlife Effects

In general, the DEIS accounts for the substantial benefits to be derived from a free flowing lower Snake River for fish and wildlife compared to the status quo. As noted, there would be substantial gains in populations of naturally spawning native anadromous fish, as well as for native resident fish such as the bull trout and redband trout. Yet the DEIS may have underestimated the overall benefit in certain key areas. Partial removal of the four Lower Snake River dams would open up 140 miles of unimpounded, free flowing river and would allow access for native species to 70 percent of the Columbia Basin's remaining quality habitat. The habitat improvements associated with this would be dramatically better than the status quo, not only for native anadromous and resident fish, but also for native wildlife in general. #20

The DEIS also misleads the public and decision-makers by unfairly reporting the environmental consequences of dam removal on non-native species. In its discussion of the environmental consequences of the various policy alternatives as compared to the status quo, the DEIS infers that the decrease in non-native species as a result of partial dam removal is a negative consequence. This is evidenced by statements such as, "non-native species [are] frequently sacrificed for the needs of listed anadromous and resident species. Population [of non-native species would be] less than under Status Quo." Yet all credible science indicates that the existence of non-native, or exotic species that reside in slack-water reservoirs created by dams are a danger to the survival of listed juvenile salmon. In fact, the DEIS even notes in an earlier discussion of environmental consequences that non-native species and their young provide a food base for predators that "maintain predator populations at unnaturally high levels, increasing predation on salmon." Furthermore, BPA's legal responsibilities are toward native species, not non-native species. The DEIS's balance of non-native species is misplaced and improperly assesses the impact of dam removal. While it is true that free flowing river conditions would decrease habitat for non-native species and consequently lessen populations, the DEIS must properly acknowledge this as a benefit, not an adverse impact, of dam removal in its comparison of alternatives. Any suggestion to the contrary is legally and scientifically indefensible. The Final EIS must correct this fundamental flaw. #21

4. Economic Effects

The DEIS unfairly characterizes the economic effects of a decision to remove the four lower Snake River dams while severely underestimating the potential economic benefits of such a policy direction in a variety of economic sectors. The DEIS' imbalance is evidenced throughout the document, over various areas. #22

i. Power

Decisions concerning power generation by their very nature come into conflict with fish and wildlife obligations. The situation is compounded by BPA's legal requirement to operate the FCRPS in a manner that provides equitable treatment to fish and wildlife concerns with other uses of the system.

Recently, due to a severe drought and volatile energy market, BPA unilaterally suspended its implementation of spill requirements outlined in the recent Federal Salmon Recovery Plan for the benefit of padding its cash reserves. Consequently, the operation of the FCRPS has been in direct and explicit violation of the "equitable treatment" requirement of the Northwest Power Act, 16 U.S.C §§ 839, *et seq*., as described above, as well as the Endangered Species Act.

In short, the needs of salmon have acted as a "shock absorber" for both the physical reliability of the

power system and for the financial health of BPA. According to the Northwest Power Act, BPA's power business must, in addition to funding fish and wildlife programs, provide its own reserves in the case of a power emergency. That has not been the case.

The DEIS claims "large adverse effects compared to the status quo" for the Weak Stock Policy Direction. Yet nowhere is it mentioned that law mandates reductions in power production for the sake of migrating salmon, nor is it mentioned that even under the status quo, BPA and the other federal action agencies are violating these legal requirements. #23

Combined, the four lower Snake River dams produce roughly 1,246 average megawatts annually, amounting to only 5 percent of the total Pacific Northwest energy system. The Drawdown Regional Economic Workgroup (DREW) estimated in its regional analysis that the average increase in monthly electric rates for replacement power with bypass would be in the range of $1.07 - $5.30 for residential ratepayers, assuming that the region replaces the lost power with more expensive forms of power generation like combined cycle turbines and gas fired power plants. As mentioned earlier, a separate study shows that residential rates would increase by only $1 to $3 per month if energy produced by the dams were replaced with a mixture of conservation and non-hydropower renewable energy.

Electricity rates in the Pacific Northwest are currently some of the least expensive in the U.S. The relatively modest increase in electric rates pales in comparison to rates elsewhere in the U.S. and becomes even less significant when considering the potential economic benefits of sustainable wild salmon populations. #24

In addition, the DEIS notes "deconstruction costs" as a negative economic effect of dam removal. The DEIS fails, however, to mention potential savings on dam maintenance and capital improvement costs to help offset the initial investment, as well as a potential increase in jobs from both deconstruction and new energy generation construction. #25

The DEIS fails to put the true impacts of power replacement into perspective, and subsequently fails to recognize potential economic benefits, such as long term and short term job increases associated with construction, maintenance and operation of new power generation sources. This failure makes it impossible for the public or decision-makers to understand fully the choices before them. The final EIS must fairly present the impacts of power changes to the system.

ii. Transportation

Without question, breaching the four lower Snake River dams would dramatically alter the way in which commodities are transported in the lower Snake River basin. Clearly, investments would have to be made in new infrastructure to transfer from barge navigation to rail or truck transportation routes. The DEIS portrays these investments as having "large adverse affects over the status quo." #26

SOS would like to point out economic analyses which demonstrate that the infrastructure investments required could be far superior to continued taxpayer and ratepayer subsidization of the Snake River waterway. Such investments carry the potential to foster economic growth in the region by providing additional rail access and service - an important factor in attracting new businesses. Therefore, the DEIS has again unfairly inflated the potential economic impacts of dam removal while failing to adequately address the potential for economic benefits. And again, in this failure the DEIS has not informed the public and decision-makers of the true impacts of this alternative.

iii. Agriculture

BPA asserts that "[o]ver 300,000 acres of irrigated land are served out of the Lower Snake reservoirs. Breaching or lowering of the reservoirs would require modifications to surface irrigation diversions or fundamental changes to irrigation use. In addition, many wells benefit from the raised groundwater levels caused by reservoir storage nearby. The annual cost of fixing wells and diversions impaired by breaching could run into tens of millions of dollars annually." #27

As confirmed by the U.S. Army Corps of Engineers and several additional studies, however, there are only approximately 37,000 acres irrigated with water from the Lower Snake River, all of which is drawn from Ice Harbor Reservoir. All additional farmland "served out of lower Snake reservoirs" irrigate using water from private wells which do not draw water directly from the river. Therefore, the DEIS' presentation on the scope of factors that shape the effects on agriculture puts forth questionable information that provides the public and decision-makers with an unfair summary of the outstanding data. We urge BPA to adjust its presentation of the scope of irrigated agriculture along the lower Snake River - and subsequently its analysis of the impacts of dam breaching on agriculture - to better reflect the facts. #27

iv. Commercial Fish Harvest

Among the benefits of healthy salmon populations, one of particular relevance is the restoration of both Tribal and non-Tribal salmon fisheries. In order to sustain these benefits, SOS advocates that fisheries be managed specifically to meet escapement goals for wild stocks, and to assure the long-term capacity of watersheds to support natural production of salmon. #28

The Weak Stock alternative calls for the elimination of most ocean harvest where targeted, or selective harvests can not be employed, resulting in an overall decrease in commercial value. This policy directive appears based on a lack of scientific evidence of the impacts of commercial fishing on listed salmon stocks. #29

The 2000 FCRPS Biological Opinion explicitly states:

"For most of the listed ESUs, opportunities to improve survival through additional harvest reductions are limited because they are not affected, or are affected only minimally, by today's much-reduced fisheries...[A]s a result, *even the complete elimination of all remaining fisheries would yield only limited benefits for many of the ESUs.*" (emphasis added)

That the DEIS would recommend this among its range of alternatives detracts from the substantial biological benefits of dam removal on the lower Snake River by unnecessarily inflating the economic impacts. A prudent policy alternative should recognize that fisheries in the Columbia River basin have already been significantly reduced in recent years in part to reduce impact on listed species. More importantly, this policy alternative should recognize that hydropower operations "harvest" many more wild salmon than do fisheries, and thus should be the real focus of any recovery efforts. Indeed, the Biological Opinion's "Incidental Take" Statement for Snake River fall chinook alone estimates a juvenile mortality rate at 88 percent from operation of the hydropower system. #30

v. Sport Fishing

Sport fishing throughout the Columbia River Basin is currently subjected to severe limitations and restrictions on the harvest of both listed and non-listed ESUs. As the All-H paper describes, freshwater harvest limitations were first put in place when the status of naturally producing fish first began to decline. As a result, "most [freshwater] fisheries within the Basin already have been severely and repeatedly reduced, so much so that today's fisheries reflect only a remnant of former fishing activity."

The Weak Stock approach seemingly proposes placing further limits on sport fishing harvest. These limits are reflected in the comparison of socioeconomic consequences of each policy alternative. As with commercial fishing, further limitations beyond current restrictions will provide few benefits, if any, while further harming economies that rely on healthy river fisheries. To again paraphrase the "All-H" paper, harvest restrictions are merely a way to "buy-time for management measures in the other H's to take place."

SOS is encouraged that the DEIS recognizes the economic benefits of a sport fishing, though these benefits are severely underestimated (see below). However, by proposing further limits on sport fishing, the DEIS is again unnecessarily inflating the socioeconomic consequences of the Weak Stock #31

alternative. The final EIS should recognize and account for this error to adequately present this alternative to the public. #31

vi. Other Recreation

The DEIS drastically underestimates the recreational benefits of breaching the lower Snake River dams, and inaccurately claims there would be fewer recreational opportunities in the Weak Stock approach than under the Status Quo. The Army Corps of Engineers' (Corps) own DEIS indicates just the opposite. Of the overall gain in recreation benefits associated with dam breaching, most would be due to the gain in river recreation days and the "*value of these days being substantially higher than the loss in recreation activities that could only be undertaken in a reservoir (i.e. water-skiing, etc.)*" (emphasis added). There would also be significant gains in fishing benefits (salmon and steelhead) over the status quo. #32

Overall the DREW estimates that in the short term, bypassing the lower Snake River dams will eliminate eight hundred reservoir-related jobs, but in the long run will generate over three thousand recreation-related jobs as new and enhanced recreation opportunities associated with a free-flowing river emerge. Perhaps more importantly, however, the DEIS fails to account for the broad range of economic benefits that could be derived from the quality-of-life assets of a naturally flowing river. Without this information, the DEIS's analysis of dam removal's impacts on recreation is fundamentally flawed and fails to paint an accurate picture. #33

B. Sustainable Use Focus

The Sustainable Use Focus, as defined in the DEIS, would "emphasize human intervention as part of a goal to restore and maintain sustainable stocks of fish and wildlife populations to promote expanded harvest and recreation opportunities." To achieve this, the Sustainable Use Focus centers on increasing hatchery production, restoring habitat, and modifying hydroelectric operations. This policy focus would also put off a decision on removal of the four lower Snake River dams, though it would remain an option if the harvest goals were not achieved by other actions. In sum, this policy alternative takes a recovery approach similar to the 2000 FCRPS Biological Opinion. That is, the Sustainable Use Focus relies on a suite of habitat, harvest and hatchery measures while only modestly addressing and modifying hydropower operations.

The DEIS acknowledges BPA's need to implement and fund fish and wildlife mitigation and recovery efforts to meet a variety of responsibilities, including those defined by the Northwest Power Act, the Endangered Species Act, the Clean Water Act, and native trust and treaty responsibilities. The Northwest Power Planning Council's 2000 Columbia River Basin Fish and Wildlife Program -- which BPA is charged with implementing, in part provides a similar vision for the Fish and Wildlife Program. It projects a Columbia River ecosystem that "sustains an abundant, productive, and diverse community of fish and wildlife, mitigating across the basin for the adverse effects to fish and wildlife caused by the development and operation of the hydrosystemS."

SOS believes that the Sustainable Use approach, as well as the approach taken by the Biological Opinion is insufficient not only to meet BPA's purposes and needs in funding and implementing fish and wildlife mitigation and recovery efforts, but to avoid jeopardy and to recover salmon and steelhead to sustainable, harvestable levels. Indeed, relying solely on the approach outlined in the BiOp to avoid jeopardy violates the Endangered Species Act. *See National Wildlife Fed'n, et al. v. National Marine Fisheries Service*, Complaint For Declaratory and Injunctive Relief (filed May 4, 2001). #34

SOS agrees that many of the measures outlined in the Sustainable Use Focus, and the BiOp, are indeed necessary to improve salmon and steelhead survival. For example, the DEIS outlines numerous beneficial habitat implementation actions under the Sustainable Use policy alternative that SOS believes should be included in any final policy alternative. Among those, are the strengthening of habitat protections through stricter standards for logging, livestock grazing, mining and road

building, and increasing the habitat connections throughout the basin. In addition, habitat actions under this policy direction as described in the DEIS would be founded with the laudable goal of restoring sustainable, naturally producing fish and wildlife populations to support tribal and non-tribal harvest, cultural practices, and economic benefits by restoring the biological integrity and genetic diversity of the Columbia River ecosystem.

As stated earlier, a fundamental problem of the Weak Stock approach is its failure to adequately address the needs of salmon populations not listed under the ESA, and subsequently its failure to take steps that would prevent healthy populations from becoming endangered. The Sustainable Use focus does not suffer from this bias. Instead, the Sustainable Use alternative gives some priority to unlisted populations.

However, by putting off a decision on dam removal in favor of modest hydro modifications as well as ramping up efforts in all other "H's", the Sustainable Use alternative fails to adequately confront the true impediments to recovering listed salmon the four lower Snake River dams. Furthermore, the "wait and see" approach employed by this alternative and the 2000 Biological Opinion places the burden of proof and the risk on listed Snake River salmon and steelhead. On the contrary, a common sense approach, and an approach that is legally and scientifically justifiable should place this burden on the action agencies to prove that dam removal is no longer necessary.

There is ample evidence to prove the substantial biological benefits to be gained from dam removal. In fact, the 2000 Biological Opinion acknowledges that dam breaching is in fact the most assured way to recover listed Snake River ESUs. SOS strongly feels that true recovery can not be achieved without breaching the four lower Snake River dams.

As a result of the fundamental flaw, SOS feels that the Sustainable Use Focus falls far short of meeting recovery needs in other areas. For example, the Sustainable Use focus would, like the Biological Opinion, increase emphasis on the harmful barging and trucking program to transport juvenile salmon while failing to mandate an aggressive spill program. The Biological Opinion and the Northwest Power Planning Council Fish and Wildlife Program establish spill as a key fish recovery and mitigation effort. Indeed, the Biological Opinion recognizes that spill is the most effective and safest means of juvenile passage.

In addition, instead of mandating a rigid spill program, the Sustainable Use focus would call for spill "as appropriate" without defining the conditions of what is and isn't "appropriate." This implies that, similar to the Biological Opinion, federal agencies would be allowed to unilaterally suspend river management requirements, like spill, subject to the declaration of an "emergency." Such exemptions of river management requirements are wholly inconsistent with both the ESA and the equitable treatment requirements of the NPA.

As such, a comprehensive and consistent policy to guide the implementation and funding of fish and wildlife recovery efforts based on the actions outlined in the Sustainable Use policy alternative will not result in the recovery of listed species. We urge BPA to merge the beneficial aspects of this approach, as identified above, into a final agency action based on the removal of the four lower Snake River dams. Anything less fails to meet the requirements of the laws and treaties that govern the Fish and Wildlife Program.

III. Conclusion

SOS urges BPA to take these issues into consideration when choosing its preferred alternative and presenting a final environmental impact statement for implementation of the fish and wildlife program. A decision based on the information presented in the DEIS would be rooted in half-truths and misrepresentations. BPA has a legal responsibility under NEPA to present the public with an objective evaluation of all reasonable alternatives. To that end, SOS urges BPA to alter the Weak Stock approach as identified above to achieve the greatest benefit from this alternative and to eliminate unnecessary consequences, and further urges BPA to consider this as its preferred

alternative.

Removal of the four lower Snake River dams provides BPA with the most assured way of meeting the goals of its fish and wildlife programs, while achieving significant economic and environmental benefits, and with much less negative impact than is portrayed in the DEIS.

Thank you for the opportunity to comment on the DEIS. Please feel free to contact us if you have any questions or need further clarification.

Sincerely,

Pat Ford, Save Our *Wild* Salmon
Bill Arthur, Sierra Club
Rob Masonis, American Rivers
Bill Sedivy, Idaho Rivers United
Liz Hamilton, Nothwest Sportfishing Industry Association
Jeff Curtis, Trout Unlimited
Tim Stearns, National Wildlife Federation
Sara Patton, NW Energy Coalition
Glen Spain, Pacific Coast Federation of Fishermen's Associations & Institute for Fisheries Resources

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Subject: SpokaneTribe'sCommentsOnF&WImplementationPlanDEIS

Attached electronic version of the Spokane Tribe's comments will be submitted in hard-copy by regular mail. The signed original may include final edits, and should be considered the official final comments of the Spokane Tribe.